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(1) The band in the Hoffman invention is constructed as a formed split (i.e. open) band, relying on this expandable construction for the ability to mount and dismount the band on the wall of the container and the ability to displace the mounted band correctly in operation. There is no suggestion that the band could be formed as a closed loop and mounted, or mounted and then formed into a closed loop or that a closed loop band could be made to work. Hoffman also specifically teaches in the opposite direction, preferring that the split band have separated ends (column 2, lines 43-45). Means for mounting the Hoffman band could not, of necessity, be means for mounting the band such that the band forms a closed loop.

(2) Even if the Hoffman band could be formed into a closed loop after mounting, the device would not permit the closed loop band to be rotated as such. The ends of the mounted band would have to separate when engaging the tapered flange structure (28) in order to expand the band and permit the band to rotate (column 2, lines 31-32).

(3) New dependant claims 20, and 21 incorporate all the subject matter of claim 19 and add additional subject matter which makes them patentable over these references.

(4) New dependant claims 22, 23, and 24 incorporate all the subject matter of claim 21 and add additional subject matter which makes them patentable over these references.



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**The Novel Physical Features Of Claims 19, 34, and 38 Produce
New And Unexpected Results And Hence Are Unobvious
And Patentable Over These References Under § 103.**

Also applicant submits that the novel physical features of claims 19, 34, and 38 are also unobvious and hence patentable under § 103 since they produce new and unexpected results over Hoffman.

These new and unexpected results are a simpler, safer and lower cost device than the reference. Applicant's device permits the closed loop band to be rotated as such when mounted. This provides greater safety because of the relative permanence of applicant's band, which is not as easily removed as the Hoffman split band. The closed loop band can be produced from thin low cost sheet or roll stock materials such as paper and plastic film, which need not be molded. An advantage of such lightweight material being formed into a closed loop is that it permits the use of comparable material for the band support, providing further savings. The applicant's device can fill a prescription with fewer components and without loss of capability because the closed loop band allows a prescription label to serve as a band support. An additional advantage is that the closed loop band is held sufficiently secure at a plurality of positions around the container to obviate the need for a tapered flange structure to control axial and rotational displacement. Capability is therefore further enhanced because applicant's device can be used with most existing cylindrical medication containers. A still further advantage of applicant's device is that application of both the band and band support is easily automated by adaptation of label application technology in widespread use today. Applicant's device is therefore vastly superior to that of Hoffman.

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**The Rejection Of Claims 2, 4, 6, 7, 8, 15, And 17 On Hoffman Are Overcome
And The Rejection Of Claims 3 And 16 On Hoffman Are Overcome**

The last OA rejected dependent claims 2, 4, 6, 7, 8, 15, and 17 on Hoffman. (Please note: 8 omitted from heading in OA, but shown in body.) The last OA rejected dependent claims 3 and 16 on Hoffman. Claims 2 and 3 have been rewritten as new dependant claim 25 to define patentability over these references. Claims 15 and 16 have been rewritten as new dependant claim 36 to define patentability over these references. Claims 4, 6, 7, 8, and 17 have been rewritten as new dependent claims 26, 28, 29, 30, and 37 respectively to define patentability over these references. Applicant requests reconsideration of this rejection, as now applicable to claims 25, 26, 28, 29, 30, 36, and 37 for the following reasons:

- (1) New dependant claims 25, and 26, incorporate all the subject matter of claim 24 and add additional subject matter which makes them patentable over these references.
- (2) New dependant claims 28, and 29 incorporate all the subject matter of claim 19 and add additional subject matter which makes them patentable over these references.
- (3) New dependant claim 30 incorporates all the subject matter of claim 21 and adds additional subject matter which makes it patentable over these references.
- (4) New dependant claims 36, and 37 incorporate all the subject matter of claim 34 and add additional subject matter which makes them patentable over these references.

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The Rejection Of Claims 10 and 12 On Hoffman And Humphrey Are Overcome

The last OA rejected dependent claims 10 and 12 on Hoffman and Humphrey. Claims 10 and 12 have been rewritten as new claims 31 and 33 respectively to define patentability over these references. Applicant requests reconsideration of this rejection, as now applicable to claims 31 and 33 for the following reasons:

- (1) New dependent claim 31 incorporates all the subject matter of claim 21 and further adds additional subject matter which makes it patentable over these references.
- (2) New dependent claim 33 incorporates all the subject matter of claim 31 and adds additional subject matter which makes it patentable over these references.
- (3) The prescription label (13) in Humphrey is not a band support. There is no suggestion that the prescription label could be a band support.
- (4) There is no justification in Hoffman and Humphrey, or in any prior art separate from applicant's disclosure, which suggests that these references be combined, much less be combined in the manner proposed.
- (5) The proposed combination would not be physically possible or operative.
- (6) Even if Hoffman and Humphrey were to be combined in the manner proposed, the proposed combination would not show all the novel physical features of claims 31 and 33.
- (7) These novel physical features of claims 31 and 33 produce new and unexpected results and hence are unobvious and patentable over these references.

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The Rejection Of Claims 5, 9, And 14 On Hoffman And Tucker Are Overcome

The last OA rejected dependent claims 5, 9, and 14 on Hoffman and Tucker. (Please note: 9 omitted from OA, but assumed by applicant.) Claim 9 has been eliminated. Claims 5 and 14 have been rewritten as new dependent claims 27 and 35 respectively to define patentability over these references, and any combination thereof. Applicant requests reconsideration of this rejection, as now applicable to claims 27 and 35 for the following reasons:

- (1) New dependent claim 27 incorporates all the subject matter of claim 21 and adds additional subject matter which makes it patentable over these references.
- (2) New dependent claim 35 incorporates all the subject matter of claim 34 and adds additional subject matter which makes it patentable over these references.
- (3) Tucker discloses a device comprising a band support member (26) being adhesively attached to the cap of a medication container. There is no suggestion that the band support could be adhesively attached to the exterior side surface of the medication container or that the device would be operational if so attached.
- (4) There is no justification in Hoffman and Tucker, or in any prior art separate from applicant's disclosure, which suggests that these references be combined, much less be combined in the manner proposed.
- (5) The proposed combination would not be physically possible or operative.
- (6) Even if Hoffman and Tucker were to be combined in the manner proposed, the proposed combination would not show all the novel physical features of claims 27 and 35.

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(7) These novel physical features of claims 27 and 35 produce new and unexpected results and hence are unobvious and patentable over these references.

The Rejection Of Claim 11 On Hoffman And Humphrey And Tucker Is Overcome

The last OA rejected dependent claim 11 on Hoffman and Humphrey and Tucker. Claim 11 has been rewritten as new claim 32 to define patentability over these references. Applicant requests reconsideration of this rejection, as now applicable to claim 32 for the following reasons:

(1) New dependent claim 32 incorporates all the subject matter of claim 31 and adds additional subject matter which makes it patentable over these references.

(2) Humphrey discloses a prescription label which is not a band support. There is no suggestion that the prescription label could be a band support.

(3) Tucker discloses a device comprising a band support member being adhesively attached to the cap of a medication container. There is no suggestion that the band support could be adhesively attached to the exterior side surface of the medication container or that the device would be operational if so attached.

(4) There is no justification in Hoffman and Humphrey and Tucker, or in any prior art separate from applicant's disclosure, which suggests that these references be combined, much less be combined in the manner proposed.

(5) The proposed combination would not be physically possible or operative.

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(6) Even if Hoffman and Humphrey and Tucker were to be combined in the manner proposed, the proposed combination would not show all the novel physical features of claim 32.

(7) These novel physical features of claim 32 produce new and unexpected results and hence are unobvious and patentable over these references.

Non-Applied References Do Not Show Applicant's Invention

The last OA cited Baustin, Telega, Jones, and Nichols Jr. as prior art of record and not relied upon.

(1) The applicant has reviewed the references, but they do not show the applicant's invention or render it obvious.

Conclusion

For all of the above reasons, applicant submits that the claims are now in proper form, and that the claims all define patentability over the prior art. Therefore the applicant submits that this application is now in condition for allowance, which action is respectfully solicited.

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Conditional Request For Constructive Assistance

Applicant has amended the claims of this application so that they are proper and define novel structure which is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,

FAX RECEIVED

Harry Giewercer

MAR 3 2003

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CERTIFICATE OF FACSIMILE TRANSMISSION

I certify that on the date below I will fax this communication, and attachments if any, to Technology Center 2800 of the Patent and Trademark Office at the following number (703) 872-9318.

Date: March 3, 2003 No. of pages: 12

Inventor's Signature: H. Giewercer